

ITEL

Rail Lease Division

Two Embarcadero Center
San Francisco, California 94111
(415) 955-9090
Telex 34234

April 16, 1979

10295
RECORDATION NO. Filed 1425

9-107A142

Hon. H.G. Homme, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

APR 17 1979 - 1 32 PM

APR 17 1979

Date

Fee \$ 50.00

Washington, D. C.

Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are one original, two counterparts and two photocopies of a Lease Agreement dated as of March 1, 1979 between ITEL Corporation, acting through its Rail Division, Two Embarcadero Center, San Francisco, California 94111 and the Marinette, Tomahawk & Western Railroad Company P.O. Box 315 Tomahawk WI 54487 covering the following railroad equipment:

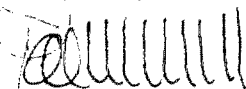
One hundred (100) 50'6" Xn Plate C Boxcars bearing the identifying marks MTW 4600-4699

Identifying marks on all of the foregoing equipment: The words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE COMMISSION", printed on each side of each unit.

Also enclosed is our check in the amount of \$50, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing document.

Please return all copies of the enclosed that are not required by the Interstate Commerce Commission to David Schwartz, Esq., of Sullivan and Worcester who will be delivering this letter on our behalf.

Sincerely,



Paul Willard
Counsel

enclosures
PW/dqs

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FEE OPERATION BR.

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LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of the 1st day of March 1979, between ITEL CORPORATION, Rail Division, a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("Itel Rail"), as Lessor and MARINETTE, TOMAHAWK & WESTERN RAILROAD COMPANY, a Wisconsin corporation, W. North Street, P.O. Box 315, Tomahawk, Wisconsin 54487 (the "Lessee"), as Lessee.

1. Scope of Agreement

- A. Itel Rail agrees to lease to Lessee, and Lessee agrees to lease from Itel Rail, One Hundred (100) Boxcars of the types and descriptions as set forth in any lease schedules executed by the parties concurrently herewith or from time to time hereafter and made a part of this Lease Agreement. The scheduled items of equipment are hereinafter called collectively the "Boxcars". The word "Schedule" as used herein includes the Schedule executed concurrently herewith and all additional Schedules and amendments thereto for Boxcars, each of which when signed by both parties shall be a part of this Lease Agreement.
- B. It is the intent of the parties to this Lease Agreement that Itel Rail shall at all times be and remain the Lessor of all the Boxcars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.
- C. Itel Rail agrees to elect, and to furnish to Lessee necessary documentation of such election, to transfer to Lessee all of the investment tax credit available to the owner with respect to all of the One Hundred (100) Boxcars leased by Itel Rail to Lessee under this Lease Agreement and agrees not to take any action inconsistent with such election, during the term of this Lease Agreement.

2. Term

- A. This Lease Agreement shall remain in full force until it shall have been terminated as to all of the Boxcars. The term of a lease with respect to each Boxcar shall begin on the date of delivery of such Boxcar as set forth in Section 3A hereof and shall end, with respect to each Boxcar, on the 144th month after delivery (the "Initial Lease Term"). All such dates of delivery shall be before December 31, 1980.
- B. If this Lease Agreement has not been earlier terminated and no default has occurred and is continuing, the lease term with respect to each Boxcar shall be automatically extended for up to ten (10) consecutive periods of twelve (12) months each, (the "Extended Lease Term") subsequent to the Initial Lease Term period; provided, however, that Itel Rail or Lessee may terminate this Lease Agreement, as to all, but not fewer than all, of the Boxcars after expiration of such Initial Lease Term or any extension thereof, by twelve (12) months notice in writing delivered to the other.

3. Supply Provisions

- A. Itel Rail will arrange for the purchase of Boxcars conforming to the specifications set forth in the Schedule and to all applicable governmental regulatory specifications. During and after manufacture of the Boxcars, Itel Rail will at its own cost and expense, cause the Boxcars to be inspected in accordance with applicable government and AAR regulations. Itel Rail shall certify in writing to Lessee that such Boxcar conforms to the specifications set forth in the Schedule and to all applicable governmental regulatory specifications. Itel Rail will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance and the date thereof (the "date of delivery"). The Boxcars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance by Itel Rail as is consistent with mutual convenience and economy. Notwithstanding that Lessee may not have immediate physical possession of the Boxcars, Lessee agrees to pay to Itel Rail the rental charges set forth in this Lease Agreement and all use of the Boxcars on and after the date of delivery shall be by or for the benefit of Lessee. To move the Boxcars to Lessee's railroad line and insure optimal use of the Boxcars, Itel Rail agrees to assist Lessee in monitoring Boxcar movement orders to other railroad lines with respect to such Boxcars in accordance with ICC and AAR interchange agreements and rules.
- B. Lessee agrees that so long as it shall have on lease any Boxcar, it shall not lease boxcars from any other party (except Owens-Illinois, Inc. or a subsidiary thereof) unless it shall have leased the One Hundred (100) Boxcars required by this Lease Agreement. Once the One Hundred (100) Boxcars shall have been leased by Lessee, it shall then not lease boxcars from any other party (except Owens-Illinois, Inc. or a subsidiary thereof) unless it shall have given Itel Rail at least thirty (30) days' prior written notice of its desire to lease boxcars. Notwithstanding the purchase of boxcars or the lease or direct interchange of boxcars from other parties, Lessee shall give preference to Itel Rail and shall load the Boxcars prior to loading other boxcars (except (i) boxcars owned by RAILBOX where Lessee is required to give preference thereto by the action of any legislative body or regulatory or governmental agency, and except (ii) boxcars assigned to Lessee's service pursuant to existing agreements or leases); provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.
- C. The delivery of any Boxcars to Lessee pursuant to this Lease Agreement or any additional Boxcars that may be leased from Itel Rail by Lessee upon the mutual agreement of the parties hereto, shall be subject to the sole determination by Itel Rail that such Boxcars or additional Boxcars will achieve a utilization, as defined in Section 6A(i) hereof, of not less than eighty-seven and five-tenths percent (87.5%) in any calendar quarter. With respect to additional Boxcars, such additional Boxcars shall be identified in Schedules to this Lease Agreement and shall benefit from and be subject to this Lease Agreement upon execution of the Schedules by Itel

Rail and Lessee.

- D. In the event during the term of this Lease Agreement any Boxcar becomes for any reason and in the sole determination of Lessee no longer available to Lessee for its intended use due to casualty loss, mechanical and/or maintenance failure, then any such Boxcars may be deleted from the Schedule.
- E. Lessee may, with the concurrence of Itel Rail, increase or decrease the number of Boxcars leased from Itel Rail under this Lease Agreement, provided (1) that Itel Rail is given notice of Lessee's intent to do so no less than ninety (90) days before the date scheduled for the manufacture of the first Boxcar leased hereunder, (2) that there be a corresponding increase or decrease in the number of Boxcars leased by Itel Rail to other railroad subsidiaries of Owens-Illinois, Inc., on terms not less favorable to the Lessee than the terms set forth in this Lease Agreement, such that the total number of Boxcars leased by Itel Rail to railroad subsidiaries of Owens-Illinois, Inc. remains unchanged, and (3) that the manufacturer's delivery schedule as originally projected for the Boxcars is not affected by such increase or decrease in the Boxcars leased hereunder.

4. Railroad Markings and Record Keeping

- A. Itel Rail agrees that on or before delivery of the Boxcars to Lessee, the Boxcars will be painted in the colors designated by Lessee and lettered with, in addition to the railroad markings of Lessee, the name and/or other insignia used by Lessee. Such name or insignia shall comply with all applicable regulations and shall be affixed to the Boxcars with a width not greater than seven (7) feet.
- B. Lessee shall, or if requested by Lessee, Itel Rail shall, during the term of this Lease Agreement prepare all documents for Lessee's signature and filing relating to the registration, maintenance and record keeping functions normally performed by Lessee with respect to the Boxcars. Such matters shall include but are not limited to the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Boxcars including an application for relief from AAR Car Service Rules 1 and 2 (at Lessee's option); (ii) registration of each Boxcar in the official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies with respect to the Boxcars.
- C. Lessee shall, or if requested by Lessee, Itel Rail shall, perform all record keeping functions related to the use of the Boxcars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules such as car hire reconciliation. Correspondence from railroads using such Boxcars shall be addressed to Lessee at such address as Lessee, or Itel Rail at Lessee's request, shall select.

- D. All record keeping performed by Itel Rail or Lessee hereunder and all record of payments, charges and correspondence related to the Boxcars shall be separately recorded and maintained by Itel Rail or Lessee in form suitable for reasonable inspection by the other party from time to time during regular business hours of the party who is maintaining the records. Lessee shall supply Itel Rail with such reports regarding the use of Boxcars by Lessee on its railroad line as Itel Rail may reasonably request.

5. Maintenance, Taxes and Insurance

- A. Itel Rail will pay all costs, expenses, fees or charges incurred in connection with the use and operation of each Boxcar during its lease term and any extension thereof, including, but not limited to, inspection, repairs, maintenance and servicing, unless the same was occasioned while in the physical possession of Lessee or any shipper on the lines of the Lessee. Lessee shall be responsible to inspect all Boxcars interchanged to it to insure that such Boxcars are in good working order and condition and shall be liable to Itel Rail for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to Itel Rail for and during the lease term of each Boxcar any right, title and interest in any warranty it may have in respect of any Boxcars. All claims or action on any warranty so assigned shall be made and prosecuted by Itel Rail at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be made payable to Itel Rail. All proceeds from such recovery shall be used by Itel Rail to repair or replace the Boxcars.
- B. Lessee may make running repairs to facilitate continued immediate use of a Boxcar, but shall not otherwise make any alterations, improvements or additions to the Boxcars without Itel Rail's prior written consent. If lessee makes an alteration to any Boxcar without Itel Rail's prior written consent, Lessee shall be liable to Itel Rail for any revenues lost due to such alteration. Title to any such alteration, improvement or addition occurring in the course of, or as a result of, normal and customary maintenance shall be and remain with Itel Rail.
- C. Upon request of and at the expense of Itel Rail, Lessee shall perform any necessary maintenance and repairs to Boxcars on Lessee's railroad tracks as may be reasonably requested by Itel Rail and which Lessee, in its opinion, has the capability to perform. Itel Rail shall also make, at its expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Boxcars in good operating condition throughout the term of the lease of such Boxcars.
- D. Itel Rail will at all times while this Lease Agreement is in effect and at its own expense cause to be carried and maintained contingent liability insurance in amounts and coverage satisfactory to Lessee. Such insurance shall be taken out in the name of Itel Rail and Lessee as their interests may appear. The policies or certificates shall provide that there shall be

no recourse against Lessee for the payment of premiums, and shall provide for at least ten (10) business days' prior written notice to be given to Lessee by the underwriters in the event of cancellation. If Itel Rail shall default in the payment of any premium in respect of any such insurance policies, Lessee may, but shall not be obliged to, pay such premium, and if Lessee does so, Lessee shall deduct the amount of such premium or premiums from the Rental Charges.

E. Lessee will at all times while this Lease Agreement is in effect be responsible for the Boxcars while they are on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the "AAR Car Service and Car Hire Agreement Code of Car Service Rules—Freight" for cars not owned by Lessee which are operating on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Boxcar by either obtaining insurance or maintaining a self insurance program which conforms to sound actuarial principles. If Lessee elects to carry insurance, it shall furnish Itel Rail concurrently with the execution hereof and thereafter at intervals of not more than twelve (12) calendar months, with a certificate of insurance signed by an independent insurance broker with respect to the insurance carried on the Boxcars. All insurance shall be taken out in the name of Lessee and Itel Rail (or its assignee) as their interests may appear.

F. Itel Rail agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee and by whomsoever payable on or relating to each Boxcar and on the lease, delivery or operation thereof which may be accrued, levied, assessed or imposed during the lease term or which remain unpaid as of the date of delivery of such Boxcar to Lessee, except taxes on net income imposed on Lessee and sales and use taxes imposed on the mileage charges and/or car hire revenues. Itel Rail shall forward to Lessee all sales and use taxes received by it on behalf of Lessee. Itel Rail and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Boxcars. Itel Rail and Lessee shall review all tax returns prior to filing, it being understood that such review will be made in a prompt fashion in order to prevent any late filings and charges.

6. Rental Charges

A. Lessee agrees to pay the following Rental Charges to Itel Rail for use of Itel Rail's Boxcars:

(i) Itel Rail shall receive as rental payments amounts equal to all of the mileage charges and car hire revenues (including both straight and incentive per diem) payable to Lessee by other railroad companies if the utilization of all of the Boxcars on an aggregate basis for each calendar year shall be equal to or less than ninety-two percent (92%). For the purpose of this Lease Agreement, utilization of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days

in each calendar year that per diem is earned on the Boxcars, commencing from the date of delivery and the denominator of which is the aggregate number of days in each year that the Boxcars are on lease to Lessee, commencing from the date of delivery.

(ii) Except as otherwise provided in subparagraph (iii), in the event the utilization exceeds ninety-two percent (92%) in any calendar year, Itel Rail shall receive an amount equal to the Itel Rail Base Rental. For the purpose of this Lease Agreement, Itel Rail Base Rental shall be an amount equal to the total mileage charges and car hire revenues for the calendar year multiplied by a fraction, the numerator of which is ninety-two percent (92%) and the denominator of which is the utilization for such calendar year. (The above determination of Itel Rail Base Rental insures that Lessee will, if the utilization is greater than ninety-two percent (92%) in any calendar year, receive all mileage and car hire revenues earned by Lessee in excess of the Itel Rail Base Rental.)

(iii) Upon final determination of Lessee's federal income tax liability for the calendar year 1980, and for any other year to which Lessee's 1980 investment tax credit may be carried, Lessee shall advise Itel Rail as to the amount of investment tax credit allowed to Lessee with respect to all of the Boxcars leased hereunder and subsequently shall advise Itel Rail as to any subsequent recapture or other modification of such investment tax credit. In the event Lessee advises Itel Rail that Lessee was allowed the full amount of investment tax credit subject to Itel Rail's election, without subsequent recapture or modification, or would have been allowed such full amount (except for Lessee's inability to use such full amount solely by reason of insufficient federal income tax liability of Lessee for 1980 and any other taxable year of Lessee to which 1980 investment tax credit may be carried,) then no refund shall be due Lessee from Itel Rail, anything to the contrary herein notwithstanding. In the event Lessee advises Itel Rail that Lessee was allowed less than the full amount of investment tax credit subject to Itel Rail's election, for any reason other than insufficient Federal income tax liability of Lessee, then Itel Rail shall promptly remit to Lessee an amount equal to any such investment tax credit received and used by Itel Rail plus an amount equal to any Federal income tax benefit to Itel Rail of making such remittance to Lessee; such remittance to be due and payable only after such use, provided that for the purpose of determining Itel Rail's investment tax credit use, investment tax credit received by Itel Rail under this Lease Agreement and any other lease agreements with Owens-Illinois, Inc. , or a subsidiary thereof shall not be deemed to have been used until all other investment tax credit for the same calendar year available to Itel Rail, or to any affiliated company which files a consolidated Federal income tax return with Itel Rail, have been used. After Itel Rail's receipt and use of investment tax

credit not allowed to Lessee is finally determined, if Itel Rail either did not receive or did not use all of such credit not allowed to Lessee, rental shall be limited to amounts calculated under this Lease Agreement, except that a percent of ninety (90) shall be substituted in subparagraphs 6A(i) and (ii) for the percentage of ninety-two (92%) and Itel Rail shall refund to Lessee any amount of rental theretofore received by Itel Rail in excess of the amount computed by using the percentage ninety (90). In no event shall Lessee be entitled to total remittance of investment tax credit and Federal income tax benefit from Itel Rail and rental adjustment and refund, all of the foregoing computed on a net after-tax basis, in excess of the amount of investment tax credit not allowed to Lessee. This subparagraph (iii) shall be applied to subsequent recapture or modification of investment tax credit caused by physically damaged or destroyed Boxcars in excess of two (2) Boxcars times the number of calendar years from 1980 to the calendar year in which such recapture or modification occurs, including 1980 as the first and the calendar year of occurrence as the last year in such calculation, but this subparagraph (iii) shall not be applied to subsequent recapture or modification caused by a number of physically damaged or destroyed Boxcars equal to or less than two (2) Boxcars times the foregoing number of calendar years.

(iv) The Rental Charges payable to Itel Rail by Lessee shall be paid from the monies received by Lessee in the following order until Itel Rail receives the amounts due it pursuant to this Section 6: (1) incentive car hire payments; (2) straight car hire payments; and (3) mileage charges.

- B. The calculations required above shall be made within three (3) months after the end of each calendar year. However, to enable Itel Rail to meet its financial commitments, Itel Rail may, prior to such calculations retain one hundred percent (100%) of the revenue received by it on behalf of Lessee. Nevertheless, since the parties desire to determine on a quarterly basis the approximate amount of the rental payment due Itel Rail, Itel Rail shall within three months (3) after the end of each calendar quarter, calculate on a quarterly basis rather than on a yearly basis, the amount due it pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.
- C. In the event a fraction, the numerator of which is the aggregate number of days in the immediately preceding four (4) calendar quarters commencing with the first full four (4) calendar quarters after receipt of the last Boxcar on the Schedule executed concurrently herewith, and the denominator of which is the aggregate number of days that the Boxcars were available to the Lessee during such period less the aggregate number of days the Boxcars were out of service on foreign railroads not earning car hire

revenues for any reason, is less than eighty-seven and five tenths (87.5%) percent, Itel Rail may, at its option and upon not less than thirty (30) days' prior written notice to Lessee, terminate this Lease Agreement with respect to such number of Boxcars as is necessary to bring the utilization of the Boxcars up to ninety percent (90%); provided, however, that prior to such termination Lessee may have the option of paying Itel Rail an amount equal to the difference between the amount Itel Rail actually received during said four (4) calendar quarters and the amount Itel Rail would have received had a utilization rate for the Boxcars of eighty-seven and five tenths (87.5%) percent been achieved. In the event utilization is below eighty-seven and five tenths (87.5%) percent and Itel Rail chooses not to terminate this Lease Agreement, Lessee will provide up to thirty (30) days free storage for any Boxcar or Boxcars remaining on Lessee's track as a result of Lessee's failure to achieve the eighty-seven and five tenths percent (87.5%) utilization. Once any such Boxcar has been stored by Lessee on its railroad tracks for thirty (30) consecutive days, Itel Rail, will, as of the thirty-first (31st) day, (1) pay Lessee for continued storage on Lessee's railroad tracks published storage charges as the reasonable cost of such storage, or (2) promptly remove such Boxcar from Lessee's railroad tracks. The storage provision described in the foregoing two sentences shall only be in effect so long as the Boxcars are placed for loading on an equal (sequential first-in-first-out) basis with all other Boxcars leased by Lessee from Itel Rail.

- D. Itel Rail may, at its option, terminate this Lease Agreement on thirty (30) days' written notice to Lessee if the ICC shall, at any time, (i) issue an order reducing incentive per diem for Boxcars on an annual basis to three (3) months or less, or (ii) determine that Lessee may not apply its net credit balance from incentive per diem settlements in payment of the Rental Charges set forth in this section. Lessee may, in any event, terminate this Lease Agreement if for any reason governmental regulations or orders prohibit the payment of the Rental Charges described in this Section 6.
- E. If any Boxcar suitable for loading remains on Lessee's railroad tracks for more than seven (7) days, Itel Rail may, at its option and upon not less than twenty-four (24) hours' prior written notice, terminate this Lease Agreement as to such Boxcar and withdraw such Boxcar from Lessee's railroad tracks. If any such Boxcar remains on Lessee's railroad tracks more than seven (7) days because Lessee has not given preference to Itel Rail's Boxcars as specified in Section 3B, Lessee shall be liable to Itel Rail for an amount equal to the car hire revenues Lessee would have earned if such Boxcars were in the physical possession and use of another railroad for the entire period after the expiration of seven (7) days, provided that there shall be excluded from the above, those days Lessee is required to hold the Boxcars at the direction of, or due to action taken or caused by Itel Rail.

7. Lessee's Assumption of Record Keeping and Receipt of Rental Charges

At any time during the term of this Lease Agreement after having requested that Itel Rail perform the record keeping referred to in Sections 4B and 4C of this Lease Agreement, at its sole discretion Lessee may, upon prior written notice to Itel Rail, take over and assume from Itel Rail as soon as is practicable but in no event later than six (6) months after receipt of notice by Itel Rail, all record keeping functions, record of payments, charges and correspondence related to the use of the Boxcars. In addition, upon the giving of the notice provided for above, the parties will, as soon as practicable but in no event later than six (6) months, make arrangements for the receipt of Rental Charges by Lessee rather than Itel Rail, it being understood that upon receipt of such Rental Charges by Lessee, Section 6B of the Lease Agreement will automatically be deemed to be revised to read as follows:

"B. The calculations required above shall be made within three (3) months after the end of each calendar year. However, since the parties desire that rental payments be made currently so that Itel Rail may meet its financial commitments, Lessee shall remit to Itel Rail on the first business day of each month, the full amount of all payments received by Lessee (less any deduction authorized to be made by Lessee under the terms of this Lease Agreement) during the next preceding calendar month from any car hire settlement with respect to any Boxcar leased hereunder. Following the yearly calculation, any amount paid to Itel Rail in excess of the Itel Rail Base Rental shall be deducted by Lessee from subsequent Rental Charges."

8. Possession and Use

A. So long as Lessee shall not be in default under this Lease Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this Lease Agreement and in the manner and to the extent Boxcars are customarily used in the railroad freight business. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Itel Rail in connection with the acquisition of Boxcars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Boxcars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Boxcars, the Boxcars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either Itel Rail or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party it being understood that where such contest is at the request of Itel Rail, Lessee shall be reimbursed by Itel Rail

- B. Lessee will not directly or indirectly create, or incur any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Boxcars or any interest therein or in this Lease Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

9. Default Remedies Upon Default

- A. The occurrence of any of the following events shall be events of default:

(i) The nonpayment by Lessee or Itel Rail of any sum required hereunder to be paid by Lessee or Itel Rail within thirty (30) days after written notice thereof;

(ii) The failure of Itel Rail to comply with the provisions of Section 7;

(iii) The default by Lessee or Itel Rail under any other material term, covenant, or condition of this Lease Agreement which is not cured within thirty (30) days after written notice thereof by either party to the other;

(iv) Any affirmative act of insolvency by Lessee or Itel Rail or the filing by Lessee or Itel Rail of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors;

(v) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee or Itel Rail that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee or Itel Rail unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment;

(vi) The subjection of any of Lessee's or Itel Rail's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency if the effect thereof would be to materially affect the ability of such party to perform its obligations under this Lease Agreement; or

(vii) The termination of any insurance coverage required of Lessee or Itel Rail by this Lease Agreement.

- B. Upon the occurrence of any event of default, Itel Rail or Lessee may, at its respective option, terminate this Lease Agreement and may proceed by appropriate court action to enforce performance by the defaulting party of its obligations under the terms of this Lease Agreement or to recover damages for the breach thereof. Lessee and Itel Rail agree that the defaulting party shall bear the costs and expenses, including reasonable attorneys' fees of any such action. Upon the event of default solely of

Lessee, Itel Rail may, by notice in writing to Lessee, terminate Lessee's right of possession of the Boxcars, whereupon all right and interest of Lessee in the Boxcars shall terminate; and thereupon Itel Rail may by its agents enter upon any premises where the Boxcars may be located and take immediate possession of them and thenceforth hold, possess and enjoy the same free from any right of Lessee. Itel Rail shall nevertheless have a right to recover from Lessee any and all rental amounts which under the terms of this Lease Agreement may then be due or which may have accrued to that date.

10. Termination

A. At and after the expiration or termination of this Lease Agreement as to any Boxcars, Lessee will surrender possession of any Boxcars in its possession or subsequently received by Lessee by delivering the same to such destination as may be designated by Itel Rail. All assembling, delivery, storage and transporting of the Boxcars shall be at the expense and risk of Itel Rail. A boxcar shall be deemed terminated and no longer subject to this Lease Agreement upon the removal of Lessee's railroad markings from the Boxcar, at the direction of, or by any of the parties hereto, and the placing thereon of such markings as may be designated by Itel Rail. The changing of the markings shall occur as follows:

(i) If such Boxcars are on the railroad line of Lessee upon such expiration or termination, or are subsequently returned to Lessee's railroad line, Lessee shall, at Lessee's expense (except when the termination of the Lease Agreement is due to the fault of Itel Rail, including the return of Boxcars by Lessee in accordance with section 8A, then at Itel Rail's expense) and within ten (10) working days after written notice is received from Itel Rail, remove Lessee's railroad markings from the Boxcars and place thereon such minimum railroad identification markings as required by the AAR and as designated by Itel Rail. After the removal and replacement of markings, Lessee shall use its best efforts to load such Boxcars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to ten (10) days' free storage on its railroad tracks for Itel Rail or the subsequent lessee of any terminated Boxcar. For any storage after the tenth (10th) day hereunder, Lessee may charge Itel Rail published storage charges as the reasonable cost of such storage, or may, at its option, arrange for suitable storage of such Boxcar with persons not a party to this Lease Agreement at the sole risk, cost and expense of Itel Rail; or

(ii) If such Boxcars are not on the railroad line of Lessee upon termination, all costs of assembling, delivery, marking, storing and transporting such Boxcars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Itel Rail.

11. Indemnities

- A. Itel Rail will defend, indemnify and hold harmless Lessee from and against (i) any and all loss or damage of or to the Boxcars, unless occurring through the fault of Lessee while Lessee has physical possession of the Boxcars and (ii) any claim (patent or otherwise), cause of action, damage, liability, fines, cost or expense (including legal fees and costs) to which the Boxcars may be subject or which may be incurred in any manner by or for the account of any such Boxcar (unless occurring through the fault of Lessee) relating to the Boxcars or any part thereof, including without limitation the construction, purchase, delivery of the Boxcars to Lessee's railroad line, ownership, leasing or return of the Boxcars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by Itel Rail or Lessee).
- B. Any expense of any kind whatsoever incurred by Lessee, which is required under the terms of this Lease Agreement to be borne by Itel Rail, shall be paid promptly by Itel Rail to Lessee upon written request therefor by Lessee, including, but not limited to, costs, expenses, fees and charges relating to maintenance, repair or inspection performed on any railroad rolling stock which Lessee is required to perform or caused to have performed pursuant to governmental or AAR regulations as a result of this Lease Agreement.

12. Representations, Warranties and Covenants

Lessee and Itel Rail respectively represent, warrant and covenant to each other that:

(i) Lessee and Itel Rail are corporations duly organized, validly existing and in good standing under the laws of the respective states where they are incorporated, and have the corporate power and authority and are duly qualified and authorized to do business where, in the reasonable opinion of their respective management, they deem it necessary to carry out their present business and operations and to own or hold under lease their properties and to perform their obligations under this Lease Agreement.

(ii) The entering into and performance of this Lease Agreement does not violate any judgment, order, law or regulation applicable to Lessee or Itel Rail, or result, in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or Itel Rail or on the Boxcars (except for the construction and purchase of such Boxcars) pursuant to any instrument to which Lessee or Itel Rail is a party or by which they or their assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee or Itel Rail before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee of Itel Rail

(iv) Lessee is not a party to any present agreement or instrument or subject to any charter or other corporate restriction which, at the time of entering into this Lease Agreement, will individually or in the aggregate materially adversely affect Lessee's ability to perform its obligations under this Lease Agreement.

(v) Lessee has during the years 1964-1968 neither built, leased, purchased nor non-equity leased any new boxcars or rebuilt any boxcars.

13. Inspection

Itel Rail shall at any time during normal business hours have the right to enter Lessee's premises where a Boxcar may be located for the purpose of inspecting and examining the Boxcars to insure Lessee's compliance with its obligations hereunder. Lessee shall notify Itel Rail of any accident of which it has knowledge connected with the malfunctioning or operation of any Boxcar, including in such report the time, place and nature of the accident and the damage caused to property, the names and addresses of any persons injured and of witnesses and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify Itel Rail in writing within five (5) days of receipt of notice of any attachment, tax lien or other judicial process affecting any Boxcar. Upon Itel Rail's written request, Lessee shall furnish a copy of its annual report submitted to the ICC and copies of any other income or balance sheet statements required to be submitted to the ICC.

14. Miscellaenous

A. This Lease Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Except for an assignment by Itel Rail to a subsidiary or affiliate or an assignment to a financial or banking institution for indebtedness incurred by Itel Rail, neither Itel Rail nor Lessee may, without the prior written consent of the other, assign this Lease Agreement or any of its rights hereunder or sublease the Boxcars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Lease Agreement.

- C. It is expressly understood and agreed by the parties hereto that this Lease Agreement constitutes only a lease of the Boxcars and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Boxcars other than as a lessee.
- D. No failure or delay by Itel Rail or Lessee shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Itel Rail or Lessee, or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- E. This Lease Agreement shall be governed by and construed according to the laws of the State of California.
- F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States Mail, postage prepaid, certified or registered, addressed to the President of Itel Rail or the General Manager of Lessee at the respective address set forth above or at such other address as may be specified by any party in a notice to all of other parties in accordance herewith.
- G. This Lease Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes any previous written or oral agreement in connection therewith.
- H. This Lease Agreement may be executed in multiple counterparts, each of which shall be considered as an original and such counterparts shall together constitute one agreement between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement as of the day and year first above written.

ITEL CORPORATION
Rail Division

BY: 

Title: PRESIDENT

Date: April 13, 1979

MARINETTE, TOMAHAWK &
WESTERN RAILROAD COMPANY

BY: 

Title: Vice President

Date: March 8, 1979

EQUIPMENT SCHEDULE No. ...1.....

Itel Corporation, Rail Division hereby leases the following Boxcars to Marinette, Tomahawk & Western Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of MARCH 1, 1979.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	Box, Steel Plate "C"	MTW 4600 - MTW 4699	50' 6"	9' 6"	11' 0"	10'	100
<p>Each Boxcar will be equipped with 80 inside Lading Strap Anchors as follows:</p> <ul style="list-style-type: none"> - 36 Lading Strap Anchors on each side arranged in 6 verticle columns and 6 horizontal rows. - 2 double Lading Strap Anchors on each end. These will be placed approximately 7' 6" above the floor, and approximately 2' 0" off the center line of the end. <p>THESE CARS MUST NOT EXCEED 5,359 CUBIC FEET CAPACITY.</p>							

Itel Rail is obligated under the terms of a Lease Agreement dated MARCH 1, 1979 to transfer investment tax credit on Boxcars Numbers MTW 4600 to MTW 4699, inclusive, to Lessee. This statement constitutes the identification and designation for investment tax credit purposes specified in paragraph 1C of such Lease Agreement.

ITEL CORPORATION, RAIL DIVISION

BY: 

TITLE: President

DATE: April 13, 1979

Marinette, Tomahawk & Western Railroad Company

BY: 

TITLE: Vice President

DATE: March 8, 1979

STATE OF OHIO }
COUNTY OF LUCAS }

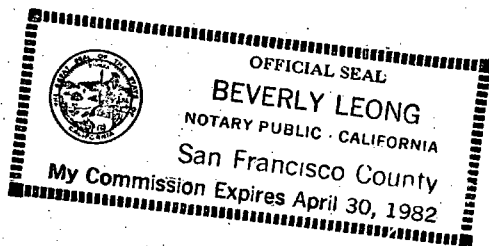
On this 8th day of March, 1979..., before me personally appeared Mell Nelson, to me personally known, who being by me duly sworn says that such person is Vice President of Marinette, Tomahawk & Western Railroad Co., that the foregoing Lease Agreement and Equipment Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Norma E. Ruehle
Notary Public

NORMA E. RUEHLE
Notary Public — State of Ohio
My Commission Expires Feb. 20, 1983

STATE OF California }
COUNTY OF San Francisco }

On this 16th day of April, before me personally appeared JOSEPH M. COSTELLO, JR., to me personally known, who being by me duly sworn says that such person is PRESIDENT of ITEL Corporation, Rail Division, that the foregoing Lease Agreement and Equipment Schedule No. was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



Beverly Leong
Notary Public